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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

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OCT 7 2011

GARY PIERCE - Chairman  
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SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

AZ CORP COMMISSION  
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*[Signature]*

IN THE MATTER OF THE APPLICATION  
OF DII-EMERALD SPRINGS, L.L.C. FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WASTEWATER  
SERVICES.

DOCKET NO. WS-20794A-11-0140

IN THE MATTER OF THE APPLICATION  
OF DII-EMERALD SPRINGS, L.L.C. FOR  
APPROVAL OF RATES.

DOCKET NO. WS-20794A-11-0279

PROCEDURAL ORDER

**BY THE COMMISSION:**

On April 4, 2011, in Docket No. WS-20794A-11-0140 ("CC&N Docket"), DII-Emerald Springs, L.L.C. ("DII") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide wastewater service in a service area adjacent to the Colorado River in Ehrenberg, approximately 45 miles south of Parker, in La Paz County, Arizona. The service area encompasses the 54-lot Emerald Springs Subdivision ("Emerald Springs"), to which DII states it has been providing wastewater service since 2004. DII explained that it established a packaged plant on an emergency basis in 2004, with permission from the Arizona Department of Environmental Quality ("ADEQ"), but that the situation has become permanent. DII stated that it has been operating at a loss and that it desires for the Commission to establish rates that will at least cover operating costs. DII stated that it applied for an Aquifer Protection Permit ("APP") for its wastewater treatment plan ("WWTP") in May 2004 and was granted an APP by ADEQ in June 2010.

On May 2, 2011, in the CC&N Docket, the Commission's Utilities Division ("Staff") issued a Notice to Docket Regarding Sufficiency, explaining that DII and Staff had worked together to evaluate DII's unique situation and had agreed that the established 30-day timeline for Staff to determine the sufficiency of DII's CC&N application should be waived to allow for the concurrent processing of a rate case.

1 On May 11, 2011, in the CC&N Docket, a letter from the Emerald Springs Homeowners  
2 Association ("HOA") was docketed, with which the HOA included electronic copies of documents  
3 purporting to be (1) a February 2011 letter from the HOA's attorney to Henry Melendez, President of  
4 DII, regarding a dispute as to rates and billing; (2) a January 2011 e-mail from Mr. Melendez to the  
5 HOA asserting that DII had applied to the Commission for adjudication that DII is not a public  
6 service corporation and directing the HOA Board that rate and service complaints are to be handled  
7 by the HOA Board rather than specific members, that the Board may contact Staff with questions  
8 about or objections to DII's application, that HOA members should be required to deal only with the  
9 HOA Board and should not contact the Commission, and that only HOA Board members should  
10 contact the Commission;<sup>1</sup> and (3) a July 2004 Agreement Regarding Sewer Services between  
11 Dynamic Financial & Investment Services, Inc., dba Dynamic Homes ("Dynamic"), and the HOA,  
12 under which the HOA agreed, *inter alia*, to pay Dynamic a monthly sewer service fee of \$55.00 per  
13 lot per month commencing upon connection to the sewer plant.

14 On June 13, 2011, in the CC&N Docket, two comments were filed by Emerald Springs  
15 homeowners who expressed concern about a possible desire of the HOA to obtain service from Doyle  
16 Thompson rather than DII.

17 On June 17, 2011, in the CC&N Docket, Staff filed a Staff Data Request, in which it included  
18 a number of questions along with a statement that Staff was working with DII on other financial and  
19 engineering data required for a rate investigation and would process the application in conjunction  
20 with the financial and engineering information received.

21 On August 1, 2011, an amended legal description was filed in the CC&N Docket.

22 On August 24, 2011, Staff issued a Sufficiency Letter in the CC&N Docket, stating that the  
23 application had met minimum sufficiency requirements as outlined in Arizona Administrative Code  
24 ("A.A.C.") R14-2-602, that Staff would be issuing additional data requests in the near future, and that  
25 the Commission has 150 days to complete its substantive review.

26 On July 15, 2011, in Docket No. WS-20794A-11-0279 ("Rate Docket"), DII filed a rate  
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28 <sup>1</sup> The Commission will accept public comment regarding a public service corporation from any individual.

1 application, using a calendar year 2010 test year ("TY"). In its rate application, DII stated that it has  
2 only one customer, the HOA; that its current monthly rate is \$3,041.18; and that DII had TY gross  
3 revenues of \$32,164.00 and TY operating expenses of \$10,962.61, but that many expenses have been  
4 subsidized or temporarily suspended. DII did not propose any specific rates or any level of revenue  
5 increase. DII also stated that DII owns, operates, and is responsible for only the actual WWTP and  
6 any process thereafter and that the HOA owns, operates, and maintains the entire collection system,  
7 including the lift station and the pipes from the lift station to the WWTP.

8 On August 15, 2011, Staff issued a Letter of Sufficiency in the Rate Docket, stating that DII  
9 has been classified as a Class E wastewater utility and that a Staff Report should be filed on or before  
10 October 14, 2011.

11 On August 26, 2011, in the CC&N Docket, a Procedural Order was issued requiring DII and  
12 Staff each to file, by September 6, 2011, a document stating its position on whether the CC&N  
13 Docket and the Rate Docket should be consolidated and whether the HOA is a necessary party in  
14 interest that should be joined in the CC&N Docket and/or the Rate Docket. The Procedural Order  
15 further required that any responsive filing be made by September 12, 2011, and extended the deadline  
16 for issuing an order in the CC&N Docket by 17 days.

17 On September 6, 2011, Staff filed a Response stating that Staff believes consolidation is  
18 appropriate and that Staff does not believe that the HOA is a necessary party that must be joined.  
19 Staff stated that if the HOA does not voluntarily intervene, Staff will be able to elicit answers to  
20 Staff's questions through informal or formal communications with the HOA.

21 On September 6, 2011, DII also filed its Response, stating that DII supports consolidation of  
22 the two dockets and that DII will support the decision of the Commission and Administrative Law  
23 Judge regarding whether the HOA is a necessary party in interest that should be joined in either  
24 docket or a consolidated docket.

25 On September 15, 2011, a Procedural Order was issued consolidating the CC&N Docket and  
26 the Rate Docket; ordering that the time clock applicable to the consolidated docket is that from the  
27 CC&N Docket; scheduling a hearing to commence on November 18, 2011; and establishing other  
28 procedural requirements and deadlines, including a deadline for DII to provide the HOA members

1 notice of the hearing, and to have notice of the hearing published, by October 10, 2011.

2       On September 29, 2011, a telephonic procedural conference was held at the parties' request.  
3 DII appeared through Henry Melendez, DII's President, and Staff appeared through counsel. Mr.  
4 Melendez stated that he had not yet obtained the names and addresses of the individual HOA  
5 members, that he believed the HOA would not provide him the names and addresses of the individual  
6 HOA members, and that he thought the HOA should be required to send out the notices to the HOA  
7 members. Mr. Melendez acknowledged that he had only spoken to one HOA representative—the  
8 HOA Treasurer—regarding the names and addresses and also acknowledged that he had not yet done  
9 anything to obtain publication of the required notice in a newspaper. Mr. Melendez was directed to  
10 make further attempts to get the names and addresses from the HOA and, if that proved impossible,  
11 to obtain the names and addresses through county property records. Mr. Melendez was directed to  
12 make a filing by October 4, 2011, indicating whether he would be able to comply with the October  
13 10, 2011, notice deadline. Mr. Melendez was advised that failure to indicate that DII would be able  
14 to comply with the October 10, 2011, notice deadline would result in rescheduling of the hearing to a  
15 later date.

16       On October 6, 2011, as DII had not yet made a filing regarding its ability to comply with the  
17 October 10, 2011, notice deadline, a Procedural Order was issued vacating the hearing scheduled for  
18 November 18, 2011, and establishing a later hearing date and corresponding procedural dates.

19       After the Procedural Order had been issued, also on October 6, 2011, DII filed a document  
20 stating that DII would be able to mail notice to all HOA members and the HOA on or before October  
21 10, 2011, as DII was obtaining mailing addresses from public records and other sources, and that DII  
22 had paid and instructed a newspaper to public the notice on October 12, 2011.

23       It appears that public notice of a hearing on November 18, 2011, may be provided by DII in  
24 spite of the Procedural Order vacating the hearing previously scheduled for that date, and in spite of  
25 DII's acknowledgment that the publication will occur after the publication deadline. As a result,  
26 there may be individuals who appear at the Commission's offices to provide public comment on  
27 November 18, 2011, although the evidentiary hearing previously set for that date has been vacated.  
28 To ensure that any individuals who appear are able to make public comment as expected, it is

1 reasonable and appropriate to convene a proceeding on November 18, 2011, solely for the purpose of  
2 taking public comment. This does not alleviate DII from its obligation to provide timely public  
3 notice of the December 16, 2011, hearing by mail and publication as required by the Procedural  
4 Order of October 6, 2011.

5 IT IS THEREFORE ORDERED that a public comment proceeding shall convene on  
6 November 18, 2011, at 10:00 a.m., or as soon thereafter as is practicable, at the Commission's  
7 offices, Room 100, 1200 West Washington, Phoenix, Arizona 85007.

8 IT IS FURTHER ORDERED that the requirements of the Procedural Order issued in this  
9 Docket on October 6, 2011, remain in effect.

10 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
11 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
12 hearing.

13 DATED this 7th day of October, 2011.

14  
15   
16 SARAH N. HARPRING  
17 ADMINISTRATIVE LAW JUDGE

18 Copies of the foregoing mailed/delivered  
19 this 7th day of October, 2011, to:


20 Henry Melendez  
21 DII-Emerald Springs, LLC  
22 212 East Rowland Street, No. 423  
23 Covina, CA 91723

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